

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2:12-cv-10583
)	
DAVID D. PATTON &)	Honorable Sean Cox
ASSOCIATES, P.C., et al.,)	
)	
Defendants.)	

United States' Expedited Motion to Compel

The United States moves under Fed. R. Civ. P. 37 to compel Patton to be deposed for the reasons set forth in the accompanying brief.

Certification

As required by LR 7.1, the government's counsel attempted to confer with Patton regarding this motion by sending a letter to him requesting that he agree to be deposed on November 2, 2012, and to inform the government's counsel of the same on or before Tuesday, October 24, 2012. Patton did not respond to the government's counsel's letter and has not otherwise appeared in this case.

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s/Michael R. Pahl

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United States of America's Brief in Support of Expedited Motion to Compel

Concise Statement of Issues Presented

Patton failed to appear for his deposition on October 16, 2012 and has not responded to the government's counsel's request to agree to appear for a deposition on November 2, 2012.

1. Should the Court grant the United States' request for expedited relief so that this motion can be heard along with the United States' motion for default judgment of permanent injunction on November 1, 2012?

2. Should Patton be ordered to appear for a deposition on November 2, 2012?

Controlling Authority

Federal Rules of Civil Procedure 37 and 69(a)(2)

Facts

On February 9, 2012, the United States brought suit against David D. Patton Associates, P.C. and David Patton , seeking, among other relief, a money judgment against Patton for penalties assessed against him under 26 U.S.C. § 6672. On June 8, 2012, this Court entered judgment against Patton for \$31,758.38.¹

Because the government's counsel had a settlement conference in another case in this district on October 15, 2012, the government's counsel noticed Patton's collection deposition for October 16, 2012. After Patton failed to appear, the government's counsel sent a letter to Patton rescheduling the deposition for November 2, 2012 and requesting that Patton confirm the same so that the United States would not have to bring a motion to compel:

You failed to appear for your scheduled deposition on October 16, 2012. I will be in Detroit for a motion hearing in this case on November 1, 2012 and will be taking a deposition in an unrelated matter in Detroit on November 2, 2012. For this reason, I have rescheduled your deposition for Tuesday, November 2, 2012 at 10:00 a.m. I have attached an amended deposition notice for your review.

Please contact me by the close of business on Tuesday, October 23, 2012 to confirm that you will attend this deposition. You can contact me either by email at michael.r.pahl@usdoj.gov or by telephone at 202-514-6488. If I do not hear from you by the close of business on Tuesday, October 23, 2012, I will bring a motion to compel your attendance at this deposition.

¹Dkt. 21.

Patton has not responded to this letter. For this reason, the United States moves on an expedited basis to compel his attendance at a deposition on November 2, 2012.

Legal Argument

1. The United States' motion for expedited relief should be granted.

Under LR(e)(2)(b), when, as here, a party brings a non-dispositive motion, the non-moving party ordinarily has 14 days to respond. In this case, however, the United States seeks expedited relief, specifically, that Patton be required to respond to this motion on or before the November 1st hearing in this case. The United States seeks expedited relief in order to avoid incurring unnecessary travel costs, as explained below.

If this motion is not considered on an expedited basis, Patton's response will not be due until November 8, 2012. Even if the United States' motion is then granted, the government's counsel will have to travel to Detroit to take Patton's deposition, incurring unnecessary additional costs in this case. If this motion is heard on an expedited basis and the United States' relief is granted, the government's counsel, who will already be in Detroit for the hearing on this case and for a deposition in an unrelated case, will not incur any additional costs in deposing Patton on November 2, 2012. For this reason, this motion should be heard on an expedited basis.

2. Patton should be compelled to attend a deposition on November 2, 2012.

This Court should also grant the United States' motion to compel. Under LR 37.1, the United States has attempted to confer with Patton in "advance of the hearing in a good faith effort to narrow the areas of disagreement," specifically, an agreement from Patton

that he will appear as set forth in the amended deposition notice on November 2, 2012. As with all other aspects of this case, Patton has simply failed to confer with the government's counsel regarding this issue.

Because a judgment has been entered in this case, the United States is entitled to depose Patton under Fed. R. Civ. P. 69(a)(2). Patton did not attend his scheduled deposition, and has not responded to the government's counsel's reasonable request to reschedule the deposition so that the United States does not incur additional costs in this matter. For these reasons, this Court should grant the United States' expedited motion to compel and order Patton to appear on November 2, 2012 for a deposition.

Conclusion

For the reasons set forth above, the United States' motion should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the United States' Expedited Motion to Compel, Brief in Support, and proposed Order has been served by defendants by U.S. Mail at the addresses below on October 26, 2012:

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